

Manual of the State Land Evaluation Advisory Council

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58.1? (a) The provisions of Title 58.1 of the Code of Virginia applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder mutatis mutandis including, without limitation, provisions relating to tax liens, boards of equalization and the correction of erroneous assessments and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

? 58.1-3244. Article not in conflict with requirements for preparation and use of true values.? Nothing in this article shall be construed to be in conflict with the requirements for preparation and use of true values where prescribed by the General Assembly for use in any fund distribution formula.

These are general provisions to assure that the Special Assessment Act is coordinated with other existing statutes.

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Part 2

Standards for Classification

STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO FOREST USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

Under the authority of §58.1-3229, et seq. of the Code of Virginia, the State Forester adopts these Standards for Classification of Real Estate as Devoted to Forest Use Under the Special Assessment for Land Preservation to:

1. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population.
2. Conserve natural resources in forms that will prevent erosion.
3. Protect adequate and safe water-supplies.
4. Preserve scenic natural beauties and open spaces.
5. Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.
6. Promote a balanced economy and ease/lessen the pressures which force the conversion of real estate to more intensive uses . . .

According to the specific authority and responsibility conveyed by §§58.1-3230, 58.1-3233 and 58.1-3240, the State Forester is directed to provide a statement of the standards which shall be applied uniformly throughout the state to determine if real estate is devoted to forest use. After holding public hearings, pursuant to the Administrative Process Act (§96.14:1 et. seq. of the Code of Virginia) the statement shall be sent to the Commissioner of the Revenue and the duly appointed assessor of each locality adopting an ordinance in compliance with Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia.

§1. TECHNICAL STANDARDS FOR CLASSIFICATION OF REAL ESTATE DEVOTED TO FOREST USE.

- A. The area must be a minimum of twenty acres and must meet the following standards to qualify for forestry use.
- B. **PRODUCTIVE FOREST LAND.** The real estate sought to be qualified shall be devoted to forest use which has existent on it, and well distributed, commercially valuable trees of any size sufficient to compose at least 40% normal stocking of forest trees, as shown in Table 1. Land devoted to forest use that has been recently harvested of merchantable timber, is being regenerated into a new forest and not currently developed for nonforest use shall be eligible. To be qualified the land must be growing a commercial forest crop that is physically accessible for harvesting when mature.
- C. **NONPRODUCTIVE FOREST LAND.** The land sought to be qualified is land devoted to forest use but which is not capable of growing a crop of industrial wood because of inaccessibility or adverse site conditions such as steep outcrops of rock, shallow soil on steep mountain sides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other conditions which prohibit the growth and harvesting of a crop of trees suitable for commercial use.
- D. **DEFINITIONS**
 1. **TREE.** A tree is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products.
 2. **STOCKING.** Stocking is the number of trees three inches and larger in diameter breast high (d.b.h. at a point on the tree trunk outside bark 4½ feet from ground level) required to equal a total basal area (b.a. is the area in square feet of a cross section of a tree at d.b.h.) of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings, or tree seedlings and trees in any combination sufficient to meet the 40% stocking set forth in Table 1.

Table 1
Minimum Number of Trees Required Per Acre to Determine
30 Square Feet of Tree Basal Area of 40%
Stocking for Classification as Forest Land

D.B.H. Range	D.B.H. in 2" Classes	Basal Area Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 Acre
up to 2.9" ? ? ? ? ? ? ? ? ? ?	Seedlings		400	80	40
3.0-4.9" ? ? ? ? ? ? ? ? ? ?	4	0.0873	400	80	40
5.0-6.9" ? ? ? ? ? ? ? ? ? ?	6	0.1964	153	31	15
7.0-8.9" ? ? ? ? ? ? ? ? ? ?	8	0.3491	86	17	9
9.0-10.9" ? ? ? ? ? ? ? ? ? ? ..	10	0.5454	55	11	6
11.0-12.9" ? ? ? ? ? ? ? ? ? ?	12	0.7854	38	8 4	
13.0-14.9" ? ? ? ? ? ? ? ? ? ?	14	1.0690	28	6 3	
15.0" +	16+? ?	1.3963	21	4 2	

NOTE (a) Area 1/5 acre; circle, diameter 105'4"; square 93'4" per side.
(b) Area 1/10 acre; circle, diameter 74'6"; square 66'.
(c) Number of seedlings present may qualify on a percentage basis; Example, 100 seedlings would be equivalent of 7.5 square feet of basal area (25% X 30 = 7.5).
(d) Seedlings per acre are based on total pine and hardwood stems. Where intensive pine management is practiced a minimum of 250 well distributed loblolly or white pine seedlings will qualify.

?2. CONSERVATION OF LAND RESOURCES, MANAGEMENT AND PRODUCTION, AND CERTIFICATION.

A.. To qualify for forest use, the owner shall certify that the real estate is being used in a planned program of timber management and soil conservation practices which are intended to:

1. Enhance the growth of commercially desirable species through generally accepted silvicultural practices.
2. Reduce or prevent soil erosion by Best Management Practices such as logging road layout and stabilization, stream side management zones, water diversion practices and other Best Management Practices which prevent soil erosion and improve water quality.

B. Certification of intent by the owner can be shown by:

1. A signed commitment to maintain and protect forest-land by documenting land-use objectives to include methods of resource management and soil and water protection or;
2. Submitting a plan prepared by a professional forester.

?3. OPINIONS.

Section 58.1-3240 of the Code of Virginia authorizes a local assessing officer to request an opinion from the State Forester determining whether a particular property meets the criteria for forest use. The request should be in writing describing the situation in question. Maps, photos or other pertinent information should accompany the request. The State Forester may hold a hearing or arrange for an onsite inspection by a Department official, the applicant and the local assessing officer. The State Forester will issue his opinion as quickly as possible after all necessary information has been received. An appeal of any opinion that does not comply with these standards may be taken as provided by ?58.1 -3240 of the Code of Virginia.

Effective date: January 1, 1989

James W. Garner
State Forester

STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO OPEN-SPACE USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW.

Under the authority of ?58.1-3229 et seq. of the Code of Virginia, the Director of the Department of Conservation and Historic Resources adopts these Standards for Classification of Real Estate As Devoted to Open-Space Use Under the Virginia Land Use Assessment Law to:

1. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural and forest products, and of open space within reach of concentrations of population.
2. Conserve natural resources in forms that will prevent erosion.
3. Protect adequate and safe water supplies.
4. Preserve scenic natural beauties and open spaces.
5. Promote proper land use planning and the orderly development of real estate for the accommodation of an expanding population.
6. Promote a balanced economy and ease pressures which force the conversion of real estate to more intensive uses.

According to the specific authority and responsibility conveyed by ?58.1-3230 and 58.1 -3240 of the Code of Virginia, the Director of the Department of Conservation and Recreation is directed to provide a statement of the standards which shall be applied uniformly throughout the Commonwealth to determine if real estate is devoted to open-space uses. After holding public hearings, the statement shall be sent to the Commissioner of the Revenue and a duly appointed assessor of each locality adopting an ordinance in compliance with Article 4 of Chapter 32 of Title 58.1, of the Code of Virginia.

?1. GENERAL STANDARDS.

To qualify as an open-space use, real estate must meet the requirements of both this section and the specific standards contained in Section 2 of these regulations. The general standards are as follows.

Department of Forestry

A. Consistency with land use plan.

1. The open-space use of the property must be consistent with the land use plan of the county, city, or town which has been made and adopted officially in accordance with Article 4, Chapter 11, Title 15.1 of the Code of Virginia.
2. A land use consistent with the land use plan means a use that is consistent with areas or land use zones depicted on a map that is part of the land use plan, or that directly supports or is generally consistent with stated land uses, natural resources conservation or historic preservation objectives, goals or standards of the land use plan.
3. A property that is subject to a recorded perpetual conservation, historic or open-space easement held by any public body, or is part of an agricultural, a forestal or an agricultural and forestal district approved by local government, shall be considered to be consistent with the land use plan.

B. Minimum acreage.

1. Except as provided in subdivision B 2 of this section, real estate devoted to open-space use shall consist of a minimum of five acres.
2. If the governing body of any county, city or town has so prescribed by ordinance, real estate devoted to open space shall consist of a minimum of two acres when the real estate is:
 - a. Adjacent to a scenic river, a scenic highway, a Virginia byway or public property listed in the approved State Comprehensive Outdoor Recreation Plan, also known as the Virginia Outdoors Plan (the Virginia Outdoors Plan can be obtained from the Department of Conservation and Recreation at 203 Governor Street, Suite 302, Richmond, Virginia 23219); or
 - b. Located in a county, city or town having a density of population greater than 5,000 per square mile.

C. Other Requirements.

Real estate devoted to open-space shall be:

1. Within an agricultural, a forestal or an agricultural and forestal district entered into pursuant to Chapter 36 of Title 15.1 of the Code of Virginia;
2. Subject to a recorded perpetual easement that is held by a public body and that promotes the open-space use classification as defined in §58.1-3230 of the Code of Virginia; or

the landowner with the governing body in accordance with Section 3 of these regulations.

D. Opinions.

In determining whether a property meets the general and specific standards for open-space use, the local assessing officer may request an opinion from the Director of the Department of Conservation and Recreation under the provisions of Section 4 of these regulations.

? 2. Specific Standards

The specific standards for determining whether real estate will qualify for special assessment based on open-space use are as follows. The term "land" includes water, submerged land, wetlands, marshes, and similar properties.

A. Park or recreation use? Lands that are provided or preserved for:

1. Any public, semi-public or privately-owned park, playground or similar recreational area, for public or community use, except any use operated with intent for profit. Examples:

? Parks, play areas, athletic fields, botanical gardens, fishing or skating ponds.

? Golf clubs, country clubs, swimming clubs, beach clubs, yacht clubs, scout camps.

? Fairgrounds.

2. Golf courses operated for profit as a public service and having the park-like characteristics normally associated with a country club.

3. Buildings shall not cover more than 10% of the site.

4. Commercial recreational or amusement places, such as driving ranges, miniature golf courses, pony rides, trap shoots, marinas, motor speedways, drag strips, amusement parks and the like, shall not qualify.

B. Conservation of land or other natural resources ?

Lands that are provided or preserved for forest preserves, bird or wildlife sanctuaries, watershed preserves, nature preserves, arboretums, marshes, swamps and similar natural areas.

C. Floodways ? Lands that are provided or preserved for:

1. The passage or containment of waters, including the flood plains or valleys and side slopes of streams that

are or may be subject to periodic or occasional overflow, such as flood plains identified by engineering surveys by the U.S. Corps of Engineers or others, or by soil surveys or topographic maps. Floodways also include adjacent lands that should be reserved as additional channels for future floods due to increased runoffs.

2. Coastal lowlands, such as bays, estuaries or ocean shores, subject to inundation by storms or high tides.
3. Tidal and Non-tidal wetlands, such as swamps, bogs and marshes.

D. **Historic or Scenic Areas?** Lands that are provided or preserved for historic or scenic purposes are:

1. On the Virginia Landmarks Register or the National Register of Historic Places or contributing properties in an historic district listed in the Virginia Landmarks Register or the National Register of Historic Places. Information concerning properties on these Registers can be obtained from the Department of Conservation and Historic Resources.
2. Properties protected by scenic or open-space easements.
3. Places designated or recommended as "Scenic" by the Department of Conservation and Recreation, the Department of Transportation, the General Assembly or other State agency subject in each case to a specific area description provided by the designating agency.

E. **Assisting in the shaping of the character, direction and timing of community development, or for the public interest** - Lands that are officially planned or approved by the local governing body to be left in a relatively natural and undeveloped state and that are provided or preserved for the purpose of shaping the locality into neighborhoods and communities, identifying their boundaries, insulating incompatible uses from one another, directing growth, controlling the rate or timing of growth or otherwise serving the public interest as determined by the local governing body. Examples:

- ? Greenbelts, parkways and trail ways,
- ? Stream valleys,
- ? Forests and farmlands,
- ? Hilltops or hillsides,
- ? Mountaintops and mountainsides,
- ? Scenic vistas.

?3. STANDARDS FOR WRITTEN COMMITMENTS BY LANDOWNERS TO PRESERVE OPEN-SPACE LAND USE

The written commitment entered into by landowners for the local governing body to preserve open-space land use, pursuant to subdivision 3 of ?58.1-3233 of the Code of Virginia, shall conform substantially to the following form of agreement:

OPEN-SPACE USE AGREEMENT

This Agreement, made this ____ day of _____ 20

between

_____, hereafter

called the Owner, and the [County, City or Town] of a political subdivision of the Commonwealth of Virginia, hereinafter called the [County, City or Town], recites and provides as follows:

RECITALS

1. The Owner is the owner of certain real estate, described below, hereinafter called the Property, and
2. The [County, City or Town] is the local governing body having real estate tax jurisdiction over the Property; and
3. The [County, City or Town] has determined:
 - A. That it is in the public interest that the Property should be provided or preserved for [Insert one or more of the following uses: park or recreational purposes; conservation of land; conservation of (Insert description of other natural resource); an historic area; a scenic area; assisting in the shaping of the character, direction and timing of community development; or other use which serves the public interest by the preservation of open-space land as provided in the land-use plan.]; and
 - B. That the Property meets the applicable criteria for real estate devoted to open-space use as prescribed in Article 4 (?58.1-3229 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia, and the standards for classifying such real estate prescribed by the Director of the Virginia Department of Conservation and Recreation; and
 - C. That the provisions of this agreement meet the requirements and standards prescribed under 58.13233 of the Code of Virginia for recorded commitments by landowners not to change an open-space use to a nonqualifying use; and

4. The Owner is willing to make a written recorded commitment to preserve and protect the open-space uses of the Property during the term of this agreement in order for the Property to be taxed on the basis of a use assessment and the Owner has submitted an application for such taxation to the assessing officer of the [County, City or Town] pursuant to ?58.1-3234 of the Code of Virginia and [citation of local ordinance]; and
5. The [County, City or Town] is willing to extend the tax for the Property on the basis of a use assessment commencing with the next succeeding tax year and continuing for the term of this agreement, in consideration of the Owner's commitment to preserve and protect the open-space uses of the property, and on the condition that the Owner's application is satisfactory and that all other requirements of Article 4, Chapter 32, Title 58.1 of the Code of Virginia and [citation of local ordinance] are complied with.

NOW THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained the parties hereby covenant and agree as follows:

1. This agreement shall apply to all of the following described real estate: [Insert property description]
2. The owner agrees that during the term of this agreement:
 - A. There shall be no change in the use or uses of the Property that exist as of the date of this agreement to any use that would not qualify as an open-space use.
 - B. There shall be no display of billboards, signs or other advertisements on the property, except to (i) state solely the name of the Owner and the address of the Property, (ii) advertise the sale or lease of the Property; (iii) advertise the sale of goods or services produced pursuant to the permitted use of the Property, or (iv) provide warnings. No sign shall exceed four feet by four feet.
 - C. There shall be no construction, placement or maintenance of any structure on the Property unless such structure is either:
 - (1) on the Property as of the date of this agreement; or
 - (2) related to and compatible with the

- E. There shall be no filling, excavating, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials which alters the topography of the Property, except as required in the construction of permissible building, structures and features under this agreement.
- F. There shall be no construction or placement of fences, screens, hedges, walls or other similar barriers which materially obstruct the public's view of scenic areas of the Property.
- G. There shall be no removal or destruction of trees, shrubs, plants and other vegetation, except that the Owner may:
 - (1) engage in agricultural, horticultural or silvicultural activities, provided that there shall be no cutting of trees, other than selective cutting and salvage of dead or dying trees, within 100 feet of a scenic river, a scenic highway, a Virginia Byway or public property listed in the approved State Comprehensive Outdoor Recreation Plan (Virginia Outdoors Plan); and
 - (2) remove vegetation which constitutes a safety, a health or an ecological hazard.
- *H. There shall be no alteration or manipulation of natural water courses, shores, marshes, swamps, wetlands or other water bodies, nor any activities or uses which adversely affect water quality, level or flow.
- *I. On areas of the Property that are being provided or preserved for conservation of land, floodways or other natural resources, or that are to be left in a relatively natural or undeveloped state, there shall be no operation of dune buggies, all-terrain vehicles, motorcycles, motorbikes, snowmobiles or other motor vehicles, except to the extent necessary to inspect, protect or preserve the area,
- J. There shall be no industrial or commercial activities conducted on the Property, except for the continuation of agricultural, horticultural or silvicultural activities; or activities that are conducted in a residence or an associated outbuilding such as a garage, smokehouse, small shop or similar structure which is permitted on the property.
- K. There shall be no separation or split-off of lots, pieces or parcels from the Property. The Property may be sold or transferred during the term of this agreement only as the same entire parcel that is the subject of this agreement;

open-space uses of the Property which this agreement is intended to protect or provide for.

- D. There shall be no accumulations of trash, garbage, ashes, waste, junk, abandoned property or other unsightly or offensive material on the Property.

the [County, City or Town]; provided, however, that the real estate tax for the Property shall not be extended on the basis of its use value until the next succeeding tax year following timely application by the Owner for use assessment and taxation in accordance with [citation of applicable local ordinance]. Thereafter, this agreement shall remain in effect for a term of [Insert a period of not less than 4 nor more than 10] consecutive years.

4. Nothing contained here in shall be construed as giving to the public a right to enter upon or to use the Property or any portion thereof, except as the Owner may otherwise allow, consistent with the provisions of this agreement.
5. The [County, City or Town] shall have the right at all reasonable times to enter the Property to determine whether the Owner is complying with the provisions of this agreement.
6. Nothing in this agreement shall be construed to create in the public or any member thereof a right to maintain a suit for any damages against the Owner for any violation of this agreement.
7. Nothing in the agreement shall be construed to permit the Owner to conduct any activity or to build or maintain any improvement which is otherwise prohibited by law.
8. If any provision of this agreement is determined to be invalid by a court of competent jurisdiction, the remainder of the agreement shall not be affected thereby.
9. The provisions of this agreement shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.
10. Words of one gender used herein shall include the other gender, and words in the singular shall include words in the plural, whenever the sense requires.
11. This agreement may be terminated in the manner

provided, however, that the Owner may grant to a public body or bodies open-space, conservation or historic preservation easements which apply to all or part of the Property.

3. This agreement shall be effective upon acceptance by

14. NOTICE: WHEN THE OPEN-SPACE USE OR USES BY WHICH THE PROPERTY QUALIFIED FOR ASSESSMENT AND TAXATION ON THE BASIS OF USE CHANGES TO A NONQUALIFYING USE OR USES, OR WHEN THE ZONING FOR THE PROPERTY CHANGES TO A MORE INTENSIVE USE AT THE REQUEST OF THE OWNER, THE PROPERTY, OR SUCH PORTION OF THE PROPERTY WHICH NO LONGER QUALIFIES, SHALL BE SUBJECT TO ROLL-BACK TAXES IN ACCORDANCE WITH ?58.1 -3237 OF THE CODE OF VIRGINIA THE OWNER SHALL BE SUBJECT TO ALL OF THE OBLIGATIONS AND LIABILITIES OF SAID CODE SECTION.

*Paragraphs H and I must be included in agreements for properties which are to be provided or preserved for natural areas left in undeveloped states, including floodways. These paragraphs are unnecessary for agreements for other types of land uses, such as for a park or a farm use.

(Seal)

Owner

[Name of City, County, Town)

by

_____(Acknowledgments)

?4. OPINIONS

In cases of uncertainty, the local assessing officer may request an opinion from the Director of the Department of Conservation and Historic Resources as to whether a particular property meets the criteria for open-space classification. The procedure for obtaining such an opinion is as follows:

- A. The local assessing officer shall address a letter to the Director, Department of Conservation and Historic Resources, 203 Governor St., Suite 302, Richmond, VA 23219, describing the particular use and situation and requesting an opinion as to whether or not it

provided in ?15.1-1513 of the Code of Virginia for withdrawal of land from an agricultural, a forestal or an agricultural an agricultural and forestal district.

12. Upon termination of this agreement, the Property shall thereafter be assessed and taxed at its fair market value, regardless of its actual use, unless the [County, City or Town] determines otherwise in accordance with applicable law.
13. Upon execution of this agreement, it shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of _____, Virginia, at the Owner's expense.

which does not comport with the standards set forth herein may be taken as provided by ?58.1-3240 of the Code of Virginia.

Certification

I hereby approve the final adoption of the amended Standards for the Classification of Real Estate as Devoted to Open Space Use under the Land Use Assessment Law as presented. I further certify the above standards as a true and correct copy.
Effective date: January 5, 1989

Signature

Name	B. C. Leynes, Jr.
Title	Director
Agency Name	Department of Conservation and Historic Resources
Date	November 16, 1988

STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO AGRICULTURAL USE AND TO HORTICULTURAL USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

Under the authority of Article 4, Chapter 32, of Title 58.1, Section 58.1-3229, of the Code of Virginia, the Commissioner of Agriculture and Consumer Services adopts these Standards for Classification of Real Estate As Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law to:

qualifies as an open space for the purpose of use value taxation. Such letter should be accompanied by exhibits such as land use maps, subdivision plats, open-space deeds or easements, applicable agricultural, forestal, historic district or other ordinances, if any, topographic maps, and photographs, sufficient to explain the situation adequately. The director may request additional information if needed.

- B. The director may hold a hearing at which the applicant and others may present additional information.
- C. The director will issue an opinion as quickly as possible after all necessary information has been received and any hearing completed. An appeal from any opinion
 - A. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population.
 - B. Conserve natural resources in forms that will prevent erosion.
 - C. Protect adequate and safe water supplies.
 - D. Preserve scenic natural beauties and open spaces.
 - E. Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.
 - F. Promote a balanced economy and ease pressures which force the conversion of real estate to more intensive uses . . .?

According to the specific authority and responsibility conveyed by Sections 58.1 -3230 (a) and (b), 58.1 -3233 and 58.1 3240, the Commissioner of Agriculture and Consumer Services is directed to provide a statement of the standards which shall be applied uniformly throughout the state to determine if real estate is devoted to agricultural or horticultural uses. After holding public hearings, the statement shall be sent to the Commissioner of the Revenue and a duly appointed assessor of each locality adopting an ordinance in compliance with this article. The area must be a minimum of five acres and must meet all the following standards to qualify for agricultural or for horticultural use.

- ?1. Previous and Current Use, and Exception

A. Previous Use.

The real estate sought to be qualified must have been devoted, for at least five consecutive years previous, to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use including, but not limited to:

1. Aquaculture
2. Forage crops
3. Commercial sod and seed
4. Grains and feed crops
5. Tobacco, cotton, and peanuts
6. Dairy animals and dairy products
7. Poultry and poultry products
8. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of any or all such animals
9. Bees and apiary products
10. Commercial game animals or birds
11. Trees or timber products of such quantity and so spaced as to constitute a forest area meeting standards prescribed by the State Forester, if less than twenty acres, and produced incidental to other farm operations
12. Fruits and nuts
13. Vegetables
14. Nursery products and floral products.

If a tract of real estate is converted from nonproduction to agricultural or horticultural production, the tract may qualify without a five-year history of agricultural or horticultural use only if the change expands or replaces production enterprises existing, on other tracts of real estate owned by the applicant.

B. Current Use.

The real estate sought to be qualified must currently be devoted to the production for sale of plants or animals, or to the production for sale of plant or

animal products useful to man, or devoted to another qualifying use including, but not limited to, the items in Section 1.A above; except that no real estate devoted to the production of trees or timber products may qualify unless:

1. The real estate is less than 20 acres.
2. The real estate meets the technical standards prescribed by the State Forester, and
3. The real estate is producing tree or timber products incidental to other farm operations.

C. Exceptions.

1. Conversions by farm operator - Non-Qualifying Real Estate.

If a tract of real estate is converted from other uses or nonproduction to agricultural or horticultural production, the tract may qualify without a five-year history of agricultural or horticultural use when the change expands or replaces production enterprises existing on other tracts of real estate owned by the applicant, regardless of location.

2. Conversions by farm operator? Qualifying Real Estate.

If a tract of real estate is converted from a qualifying use (forestry or open space) to agricultural or horticultural production, the tract may qualify without the five-year history of agricultural or horticultural use.

3. Government Action

If a tract of real estate has previously qualified for agricultural use taxation is not devoted to agricultural or horticultural production because of governmental actions, the tract or portions shall be considered productive for that period of time.

2. Conservation of Land Resources, Management and Production, and Certification.

A. Conservation of Land Resources.

To qualify for agricultural or horticultural use, the applicant shall certify that the real estate is being used in a planned program of soil management and soil conservation practices which is intended to:

1. Reduce or prevent soil erosion by best management practices such as terracing, cover cropping, strip cropping, no till planting, sodding waterways, diversion, water impoundments, and other best management practices which prevent soil erosion and improve water quality.
2. Maintain soil nutrients by the application of soil nutrients (organic and inorganic) needed to produce average yields of agricultural crops or as recommended by soil tests.
3. Control brush, woody growth, and noxious weeds on row crops, hay, and pasture by the use of herbicides, biological controls, cultivation, mowing, or other normal cultural practices.

B. Management and Production.

To qualify for agricultural or horticultural use, the applicant shall certify that the real estate is being used in a planned program of management and production of field crops, livestock, livestock products, poultry, poultry products, dairy, dairy products, aquaculture products, or horticultural products for sale.

Field crop production shall be primarily for commercial uses and the average crop yield per acre on each crop grown on the real estate during the immediate three years previous, shall be equal to at Horticultural production includes nursery, greenhouse, cut flowers, plant materials, orchards, vineyards and small fruit products.

Timber production, in addition to crop, livestock, dairy, poultry, aquaculture, and horticultural production on the real estate must meet the standards prescribed by the State Forester for the forest areas and will be assessed at use value for forestry purposes.

3. Certification Procedures.

A. Documentation.

The commissioner of revenue or the local assessing officer may require the applicant to certify that the real estate is devoted to the bona fide production for sale of agricultural and horticultural products being used in a planned program of soil management and a planned program of management and production of field crops, livestock dairy, poultry, aquaculture, horticultural crops, and timber products. The commissioner of revenue or local assessing officer may find one of the following documents useful in

least one-half of the county (city) average for the past three years; except that the local government may prescribe lesser requirements when unusual circumstances prevail and such requirements are not realistic.

Livestock, dairy, poultry, or aquaculture production shall be primarily for commercial sale of livestock, dairy, poultry and aquaculture products. Livestock, dairy and poultry shall have a minimum of twelve animal unit months of commercial livestock or poultry per five acres of open land in the previous year. One animal unit to be one cow, one horse, five sheep, five swine, one hundred chickens, sixty-six turkeys, one hundred other fowl. (An animal unit month means one mature cow or the equivalent on five acres of land for one month; therefore, twelve animal unit months means the maintenance of one mature animal on each five acres for twelve months, or any combination of mature animals and months that would equal twelve animal unit months such as three mature animals for four months, four mature animals for three months, two mature animals for six months, etc.)

Aquaculture production shall be primarily for commercial sale of freshwater fish and shellfish under controlled conditions for food.

making his determination:

1. The assigned USDA/SCS farm number, and evidence of participating in a federal farm program, or
2. Federal tax forms (1040F) Farm Expenses and Income, (4835) Farm Rental Income and Expenses, or (1040E) Cash Rent for Agricultural Land, or
- *3. A Conservation Farm Management Plan prepared by a professional.
- **4. Gross Sales averaging more than \$1,000 annually over the previous three years.

*The 1985 Food Policy Act (Farm Bill) required farmers participating in federal farm programs to have a farm conservation plan proposed by the USDA Soil Conservation Service by 1990 and fully implemented by 1995.

**The Agriculture Census defines a farm as a place

where agricultural products were sold or normally would have been sold annually averaging more than \$1,000.

B. Interpretation of Standards.

In cases of uncertainty on the part of the commissioner of revenue or the local assessing officer, the law authorizes him to request an opinion from the Commissioner of Agriculture and Consumer Services as to whether a particular property meets the criteria for agricultural or horticultural classification. The procedure for obtaining such an opinion is as follows:

1. The commission of revenue or the local assessing officer shall address a letter to the Commissioner, Virginia Department of Agriculture and Consumer Services, PO. Box 1163, Richmond, Virginia 23209, describing the use and situation, and requesting an opinion of whether (the real estate) qualifies as agricultural or horticultural real estate for the purpose of use-value taxation. The letter should include the following:
 - a. Owner's name and address.
 - b. Operator's name and address.
 - c. Total number of acres, acres in crops, acres in pastures, acres in soil conservation programs (Agricultural Stabilization and Conservation Service, Soil Conservation Service, Virginia Department of Conservation and Historic Resources programs) and acres in forest.
 - d. If more than one tract of real estate, the number of acres in each tract and whether the tracts are contiguous.
 - e. A copy of application for land use assessment taxation.
2. The Commissioner may request additional information, if needed, directly from the applicant; or he may hold a hearing at which the applicant and others may present additional information.
3. The Commissioner will issue an opinion as soon as possible after all necessary information has been received. An appeal of any opinion which does not comply with these standards may be made as provided by Section 58.1-3240,

Chapter 32 of Title 58.1, Article 4 of the Code of Virginia.

Effective November 3, 1988

Dr. Clinton V. Turner

Commissioner

Department of Agriculture
and Consumer Services